



Law Society
of Scotland

Briefing in advance of the Scottish Government Debate

Retained EU Law (Revocation and Reform) Bill – UK
Legislation

February 2023



Summary comments

Constitution, Europe, External Affairs and Culture Committee 1st Report, 2023 (Session 6)

We note the report by the Constitution, Europe, External Affairs and Culture Committee on the LCM: [Legislative Consent Memorandum for the Retained EU Law \(Revocation and Reform\) Bill \(UK Parliament legislation\) \(azureedge.net\)](https://www.azureedge.net). We echo many of the views of the Committee in our analysis of the bill. For further detail see our Briefing for the Second Reading debate on the Bill in the House of Lords: [31012023-retained-eu-law-revocation-and-reform-bill-house-of-lords-second-reading-briefing.pdf \(lawsco.org.uk\)](https://www.lawsco.org.uk) We also note the House of Lords Constitution Committee Paper (HL Paper 151) on the Retained EU Law (Revocation and Reform) Bill [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](https://www.parliament.uk).

The origins of Retained EU Law

In the foreword to *Legislating for the United Kingdom's withdrawal from the European Union* (CM 9446, 2017) the then Prime Minister, Teresa May MP, stated "Our decision to convert the 'acquis' – the body of European legislation – into UK law at the moment we repeal the European Communities Act is an essential part of this plan. This approach will provide maximum certainty as we leave the EU. The same rules and laws will apply on the day after exit as on the day before. It will then be for democratically elected representatives in the UK to decide on any changes to that law, after full scrutiny and proper debate".

These objectives were achieved by the creation of the new and unique concept of Retained EU Law in the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020.

If we accept the premise that retaining EU law in UK law provided "the maximum certainty" as the UK left the EU, then subject to any particular amendments which are necessary to keep the body of law up to date and functioning, there is no reason why retained EU law (REUL) cannot be considered a sustainable concept. On the other hand, it would be equally possible following a thorough review and relevant amendments that incorporation into domestic law in the four UK jurisdictions could be completed.

The Government's Review of Retained EU Law and the sunset deadline

The review of REUL has been begun in terms of that announced by Lord Frost: [UK Government - Retained EU Law Dashboard | Tableau Public](https://www.tableau.com/publication/uk-government-retained-eu-law-dashboard) as paragraph 13 of the Explanatory Notes ("EN") states that: "now the Government is in a position to ensure that REUL can be revoked, replaced, restated, updated and removed or amended to remove burdens."

The Bill intends to further facilitate the review and provides that it should be carried out by the end of 2023. However, given the fact that there are 2,400 pieces of REUL (see EN paragraph 16) identified in the EU Law Dashboard, together with a further reported 1400 pieces reported by the Financial Times *UK plan to scrap all EU laws suffers a new setback, 7 November 2022*, and the recent report by the Food Standards Agency that, "The FSA has identified 113 individual substantive pieces of REUL covering food and feed safety and standards in England and at least a further 39 pieces of REUL that are specific to our remit in Wales on matters to do with food composition and labelling. In addition, individual retained legislative authorisations, which allow animal feed products (c.500 pieces) and GM products (c.200 pieces) to be sold legally in the UK, are also technically individual pieces of REUL. So, in total, the FSA advises ministers on over 800 pieces of REUL that are subject to review under this Bill.

2.5 EU rules for food and feed will continue to be directly applicable in Northern Ireland under current NI Protocol terms, so food and feed law in Northern Ireland will not be affected in the same way by the Bill. We are undertaking analysis to understand the implications of the Bill on any REUL that exists in Northern Ireland” see: [Retained EU Law \(Revocation and Reform\) Bill 2022 | Food Standards Agency](#).

It is likely that there will be more than 5,000 pieces of REUL which will be affected by this Bill.

The Dashboard also does not cover all the REUL made by the devolved administrations [Retained EU law dashboard - GOV.UK \(www.gov.uk\)](#).

We are seriously concerned that the proposed statutory deadline of the “end of 2023” does not appear to allow sufficient time to enable the review of REUL to be completed properly after due consultation with the devolved administrations and relevant stakeholders including UK Parliamentary and Devolved Legislature Committees.

The Bill’s impact on Devolution, Common Frameworks and International Agreements

The Scottish Government has made clear its opposition to the Bill and has lodged a draft Legislative Consent Memorandum. The Memorandum states that “the Parliament should not give consent to the Bill for three reasons: its deregulatory agenda; its undermining of devolution; and the risk posed by the sunset provision to automatically repeal this body of law unless Ministers take legislative action and the date of sunset which will disrupt Scottish Government work, including the legislative programme”: [Legislative consent memorandum \(parliament.scot\)](#).

A number of provisions of the Bill set out restrictions on the powers of the devolved administrations. Legislation which affects the legislative competence of the Scottish Parliament or executive competence of the Scottish Ministers engages the legislative consent convention. The UK Government should ensure that where the convention applies in relation to the Bill, it should be complied with.

We are also concerned that the process of moving from the “maximum certainty” of REUL to domestic provisions could result in less certainty and more confusion with consequent adverse impact on those individuals and businesses affected.

This is particularly so in the case of Scotland in view of the current policy of the Scottish Government and Parliament under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to keep pace with EU law. This is likely to result in considerable divergence between what domestic provisions replace REUL in Scotland and the rest of the UK which may result in difficulties in connection with the United Kingdom Internal Market Act 2020. This is despite what is stated in paragraph 60 EN that: “The Government remains committed to respecting the devolution settlements and the Sewel convention and has ensured that the Bill will not alter the devolution settlements and will not intrinsically create greater intra-UK divergence.”

One of the most successful methods to manage intra-UK divergence has been the creation of Common Frameworks. Common Frameworks are defined in the UK Internal Market Act 2020 as “a consensus between a Minister of the Crown and one or more devolved administrations as to how devolved or transferred matters previously governed by EU law are to be regulated after IP completion day”: see section 10(4).

The Common Frameworks Scrutiny Committee of the House of Lords in its Report entitled 'Common frameworks: an unfulfilled opportunity?' recommended at paragraph 80: “that the UK Government considers how legislation it brings forward might conflict with relevant common frameworks, impede their successful operation, and affect the health of the Union. Decisions made between the four administrations via a common framework should take priority in areas where the Subsidy Control Act is relevant” see: [Common Frameworks: an unfulfilled opportunity? \(parliament.uk\)](#).

The Government in its response to the Committee’s report stated at paragraph 23:

“The Retained EU Law (Revocation and Reform) Bill, insofar as it introduces a date for the sunseting of retained EU law (REUL), will impact on most if not all of the Common Frameworks. The UK Government has committed to the proper use of Common Frameworks and will not seek to make changes to REUL falling within them without following the ministerially-agreed processes in each Framework” see: [Government Response to the House of Lords Common Frameworks Scrutiny Committee report: ‘Common Frameworks: an unfulfilled opportunity?’](#)

The UK Government’s commitment is welcome but does not go far enough. In our view Common Frameworks should be excluded from the sunseting provisions.

Furthermore, aspects of REUL will need to continue to satisfy the UK’s International Agreements, for example the UK/EU Withdrawal Agreement, the Northern Ireland Protocol or the UK/EU Trade and Cooperation Agreement. The Bill makes no provision to preserve REUL in fulfilment of these international agreements see: [Retained EU Law \(Revocation and Reform\) Bill \(parliament.uk\)](#)

Consultation with stakeholders

The Bill will require considerable amendment to ensure that there is adequate consultation with relevant stakeholders before moving from the current arrangements of REUL to domestic provisions.

For further information, please contact:

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